

1 William M. Fitzgerald  
 2 LAW OFFICES OF WILLIAM M. FITZGERALD  
 3 Second Floor, Macaranas Building  
 4 Beach Road, Garapan, Saipan, CNMI  
 5 Mail: PO Box 500909 Saipan MP 96950  
 6 Phone: 234-7241  
 7 Fax: 234-7530

8 Ramon K. Quichocho  
 9 LAW OFFICE OF RAMON K. QUICHOCHO, LLC  
 10 Second Floor, Sign Arts Building  
 11 Ch. Msgr. Guerrero, San Jose, Saipan, CNMI  
 12 Mail: PO Box 505621 Saipan MP 96950  
 13 Phone: 234-8946  
 14 Fax: 234-8920

15 Michael W. Dotts / Joseph E. Horey  
 16 O'CONNOR BERMAN DOTTS & BANES  
 17 Second Floor, Nauru Building  
 18 Marianas Business Plaza  
 19 Nauru Loop, Susupe, Saipan, CNMI  
 20 Mail: PO Box 501969 Saipan MP 96950  
 21 Phone: 234-5684  
 22 Fax: 234-5683

23 Attorneys for Defendant

24  
 25 IN THE DISTRICT COURT  
 26 FOR THE NORTHERN MARIANA ISLANDS

27 UNITED STATES OF AMERICA,	)	Criminal Case No. 08-00016
	)	
28 Plaintiff,	)	
	)	
29 vs.	)	DEFENDANT'S
	)	SUPPLEMENTAL
30 LARRY BORJA HOCOG,	)	PROPOSED
	)	JURY INSTRUCTIONS
31 Defendant.	)	

32 Defendant hereby submits the attached supplemental proposed jury instructions.  
 33 Respectfully submitted this 9th day of July, 2008.

34 LAW OFFICES OF WILLIAM M. FITZGERALD  
 35 Attorney for Defendant

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 37 by: \_\_\_\_\_/s/\_\_\_\_\_  
 38 William M. Fitzgerald

1 LAW OFFICES OF RAMON K. QUICHOCHO  
2 Attorneys for Defendant

O'CONNOR BERMAN DOTTS & BANES  
Attorneys for Defendant

3  
4  
5 by:                     /s/                      
Ramon K. Quichocho

by:                     /s/                      
Michael W. Dotts  
Joseph E. Horey

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7 3391-02-080709-supplemental jury instructions.wpd  
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INSTRUCTION NO. \_\_\_\_\_

## **SCHEDULE II CONTROLLED SUBSTANCES**

Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance in schedule II, which is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act, may be dispensed without the written prescription of a practitioner, except that in emergency situations, as prescribed by the Secretary by regulation after consultation with the Attorney General, such drug may be dispensed upon oral prescription in accordance with section 503(b) of that Act. Prescriptions shall be retained in conformity with the requirements of section 827 of this title. No prescription for a controlled substance in schedule II may be refilled.

21 U.S.C. § 829(a).

INSTRUCTION NO. -- \_\_\_\_

**DISPENSE—DEFINED**

The term "dispense" means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling, or compounding necessary to prepare the substance for such delivery. The term "dispenser" means a practitioner who so delivers a controlled substance to an ultimate user or research subject.

21 U.S.C. § 802(10).

INSTRUCTION NO. \_\_\_\_\_

**PRESCRIPTION—DEFINED**

The term prescription means an order for medication which is dispensed to or for an ultimate user but does not include an order for medication which is dispensed for immediate administration to the ultimate user. (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription.)

21 C.F.R. § 1300.01(b)(35)

INSTRUCTION NO. \_\_\_\_\_

**DISTRIBUTE—DEFINED**

The term "distribute" means to deliver (other than by administering or dispensing) a controlled substance or a listed chemical. The term "distributor" means a person who so delivers a controlled substance or a listed chemical.

21 U.S.C. § 802(11).

INSTRUCTION NO. \_\_\_\_\_

**DELIVER OR DELIVERY—DEFINED**

The terms "deliver" or "delivery" mean the actual, constructive, or attempted transfer of a controlled substance or a listed chemical, whether or not there exists an agency relationship.

21 U.S.C. § 802(8).

INSTRUCTION NO. \_\_\_\_\_

**PRACTITIONER—DEFINED**

The term "practitioner" means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.

21 U.S.C. § 802(21).



INSTRUCTION NO. \_\_\_\_\_

**ULTIMATE USER—DEFINED**

The term "ultimate user" means a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for an animal owned by him or by a member of his household.

21 U.S.C. § 802(27).

INSTRUCTION NO. \_\_\_\_

**ADMINISTER—DEFINED**

The term "administer" refers to the direct application of a controlled substance to the body of a patient or research subject by --

- (A) a practitioner (or, in his presence, by his authorized agent), or
- (B) the patient or research subject at the direction and in the presence of the practitioner, whether such application be by injection, inhalation, ingestion, or any other means.

21 U.S.C. § 802(2).

INSTRUCTION NO. \_\_\_\_\_

**PRACTITIONERS EMPLOYED BY HOSPITALS**

An individual practitioner who is an agent or employee of a hospital or other institution may, when acting in the normal course of business or employment, administer, dispense, or prescribe controlled substances under the registration of the hospital or other institution which is registered in lieu of being registered him/herself, provided that:

- (1) Such dispensing, administering or prescribing is done in the usual course of his/her professional practice;
- (2) Such individual practitioner is authorized or permitted to do so by the jurisdiction in which he/she is practicing;
- (3) The hospital or other institution by whom he/she is employed has verified that the individual practitioner is so permitted to dispense, administer, or prescribe drugs within the jurisdiction;
- (4) Such individual practitioner is acting only within the scope of his/her employment in the hospital or institution;
- (5) The hospital or other institution authorizes the individual practitioner to administer, dispense or prescribe under the hospital registration and designates a specific internal code number for each individual practitioner so authorized; and
- (6) A current list of internal codes and the corresponding individual practitioners is kept by the hospital or other institution and is made available at all times to other registrants and law enforcement agencies upon request for the purpose of verifying the authority of the prescribing individual practitioner.

21 CFR § 1301.22; 62 FR 13950, Mar. 24, 1997